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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR AMAYA,

Defendant and Appellant.

B211079

(Los Angeles County
Super. Ct. No. BA107110)

APPEAL from an order of the Superior Court of Los Angeles County, Larry Paul Fidler, Judge. Affirmed.

Andres Z. Bustamante for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., and Sarah J. Farhat, Deputy Attorneys General, for Plaintiff and Respondent.

Cesar Amaya appeals from the trial court's order denying his motion to reconsider a previously denied petition for writ of habeas corpus or to construe his original petition as a motion to vacate pursuant to Penal Code section 1473.6 (section 1473.6). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Amaya was charged in a felony complaint filed on January 5, 1995 with one count of possession of a controlled substance (cocaine) in violation of Health and Safety Code section 11350, subdivision (a). Following a preliminary hearing at which only Los Angeles Police Officer Daniel Lujan, one of the arresting officers, testified, Amaya was held to answer. On February 16, 1995 Amaya pleaded guilty and was sentenced to three years of probation with a condition he serve 90 days in county jail. No appeal was filed.

In July 1996 Amaya was again arrested and charged with assault with a deadly weapon. In November 1996 Amaya pleaded guilty to the charge. He was sentenced to two years in state prison with a concurrent two-year state prison sentence imposed for the 1995 drug conviction based on Amaya's additional admission he had violated his probation by committing the aggravated assault. Amaya served approximately 13 months in prison and was released on parole. He successfully completed the terms of parole and was discharged from parole in the fall of 1999.

In January 2002, following efforts by federal immigration officials to deport him based at least in part on his 1995 felony drug conviction, Amaya filed a petition for writ of habeas corpus or appropriate equitable relief. The petition asserted that the cocaine allegedly found in Amaya's possession had been planted by Officer Lujan and his partner, who were members of the Rampart Division anti-gang CRASH (Community Resources Against Street Hoodlums) unit, and that Lujan had committed perjury at the preliminary hearing when describing the circumstances surrounding Amaya's arrest and the discovery of the illegal drugs. Amaya argued the 1995 drug conviction was unlawful because his arrest, plea of guilty and conviction were based on perjured testimony and false physical evidence and directly resulted from the corrupt actions of Rampart Division CRASH officers.

In his petition Amaya acknowledged he was no longer in actual or constructive custody for purposes of a writ of habeas corpus but urged the court to exercise its equitable power to dismiss the case. The trial court denied the petition on March 25, 2002, finding it was without jurisdiction to grant habeas corpus or coram nobis relief, as Amaya had conceded, and ruling it had no power to fashion any other form of equitable relief. The court suggested a Governor's pardon was the only available remedy for Amaya. No appeal was filed from this order.

In September 2002 the Governor signed Senate Bill No. 1391 (2001-2002 Reg. Sess.), which added section 1473.6 to the Penal Code, effective January 1, 2003. (See Stats. 2002, ch. 1105, § 3.) Section 1473.6 authorizes a person no longer imprisoned or restrained (and, therefore, without standing to petition for a writ of habeas corpus) to file a motion to vacate a judgment based on newly discovered evidence of certain types of fraud or misconduct by a government official, including evidence of false trial testimony by a government official that was substantially probative on the issue of guilt or punishment (§ 1473.6, subd. (a)(2)) or "misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment." (§ 1473.6, subd. (a)(3).) Section 1473.6, subdivision (d), however, requires any motion for relief to be filed within one year of the later of the date (1) the moving party discovered or could have discovered with the exercise of due diligence additional evidence of government misconduct beyond the moving party's personal knowledge or (2) the January 1, 2003 effective date of the section—that is, no later than January 2, 2004.

On March 27, 2008 Amaya filed a document entitled "Notice of Motion and Motion To Reconsider Previously Filed Petition for Writ of Habeas Corpus and/or Appropriate Equitable Relief; Motion To Construe Original Petition as a Motion To Vacate Pursuant to Penal Code § 1473.6." Amaya contended information about the nature and extent of the Rampart Division/CRASH unit scandal, including evidence officers had testified falsely and fabricated evidence, was not available until sometime in

2001 (although the first public report of the scandal was released by Los Angeles Police Chief Bernard Parks on March 1, 2000). Accordingly, he asserted his January 2002 petition was filed within one year of the date by which he could have reasonably discovered the additional evidence of misconduct by a government official beyond his own personal knowledge and argued his 2002 petition, filed before the effective date of section 1473.6, should be deemed timely and reconsidered in light of the subsequently passed legislation authorizing the equitable relief he had requested. Amaya did not explain why he had not filed a new motion to vacate his 1995 drug conviction within the one-year period specified in section 1473.6, subdivision (d)(2).

On May 21, 2008 the trial court denied the motion as untimely: “A motion pursuant to Penal Code § 1473.6 must be filed within one year from the date the Bill was enacted, or within one year from the date the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the fraud or misconduct by a government official beyond the moving party’s personal knowledge. [Citation.] Since Petitioner filed his petition for writ of habeas corpus on January 25, 2002 with the newly discovered evidence, but § 1473.6 was not enacted until January 1, 2003, the deadline for Petitioner to have filed this motion was January 2, 2004. Since Petitioner did not file his motion until March 27, 2008, over four years beyond the deadline, his motion is untimely.” (Fn. omitted.)

The trial court granted Amaya’s request for a certificate of probable cause. Amaya filed a timely notice of appeal.

DISCUSSION

Section 1473.6 creates a procedural vehicle—a motion to vacate the judgment—for individuals no longer incarcerated or on probation or parole to challenge a conviction based on false physical evidence or perjured testimony given by police officers or other government officials: “(a) Any person no longer unlawfully imprisoned or restrained may prosecute a motion to vacate a judgment for any of the following reasons: [¶] (1) Newly discovered evidence of fraud by a government official that completely

undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence. [¶] (2) Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment. [¶] (3) Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph.”¹

Section 1473.6, subdivision (d), establishes two alternative time limits for filing the motion: If the moving party discovered the new evidence after January 1, 2003, the effective date of the statute, he or she has one year from the date of discovery (or from the date the evidence should have been discovered in the exercise of reasonable diligence) to move to vacate the judgment. If the evidence was discovered (or should have been discovered) prior to the January 1, 2003, the motion must be filed on or before January 2, 2004.² As the trial court held, this latter provision applies to Amaya, who was aware of the additional evidence regarding false physical evidence and perjured testimony by Rampart CRASH officers no later than January 25, 2002 when he filed his original petition for writ of habeas corpus. Accordingly, the motion filed in March 2008 was untimely.

¹ Section 1473.6, subdivision (b), defines ““newly discovered evidence”” as “evidence that could not have been discovered with reasonable diligence prior to judgment.” Section 1473.6, subdivision (c), provides “[t]he procedure for bringing and adjudicating a motion under this section, including the burden of producing evidence and the burden of proof, shall be the same as for prosecuting a writ of habeas corpus.”

² Section 1473.6, subdivision (d), provides, “A motion pursuant to this section must be filed within one year of the later of the following: [¶] (1) The date the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the misconduct or fraud by a government official beyond the moving party's personal knowledge. [¶] (2) The effective date of this section.”

Amaya's argument that the express time requirements for filing a motion to vacate under section 1473.6 are inapplicable in this case because he did not file a new motion, but instead sought reconsideration of his 2002 habeas petition, lacks merit. Although the order denying the 2002 petition is not before us, the trial court's determination it had no jurisdiction to grant relief was plainly correct at the time it was made; and Amaya does not suggest otherwise. There is nothing to reconsider (even putting aside the total absence of any justification for his six year delay in seeking reconsideration). Amaya now seeks a different remedy under a newly enacted statute, intended by the Legislature to provide a means for individuals in his situation to set aside an unlawful conviction. He had a year to request relief. He failed to do so. The motion was properly denied.

DISPOSITION

The trial court's May 21, 2008 order denying Amaya's motion is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.